84-1116

Office - Supreme Court, U.S.
FILED
DEC 14 1984
ALEXANDER L. STEVAS
CLERK

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

STATE OF LOUISIANA,
PETITIONER

versus

CHARLES JACKSON,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR CERTIORARI

JOHN M. MAMOULIDES
DISTRICT ATTORNEY
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
STATE OF LOUISIANA

DOROTHY A. PENDERGAST
ASSISTANT DISTRICT ATTORNEY
RESEARCH & APPEALS
OFFICE OF THE
DISTRICT ATTORNEY
NEW COURTHOUSE ANNEX
GRETNA, LOUISIANA 70053
TELEPHONE: (504) 368-1020

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

STATE OF LOUISIANA,
PETITIONER

versus

CHARLES JACKSON,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR CERTIORARI

JOHN M. MAMOULIDES
DISTRICT ATTORNEY
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
STATE OF LOUISIANA

DOROTHY A. PENDERGAST
ASSISTANT DISTRICT ATTORNEY
RESEARCH & APPEALS
OFFICE OF THE
DISTRICT ATTORNEY
NEW COURTHOUSE ANNEX
GRETNA, LOUISIANA 70053
TELEPHONE: (504) 368-1020

QUESTIONS PRESENTED

I. Did the Louisiana Supreme Court's decision to reverse the denial of a Motion To Suppress the evidence contradict the Fourth Amendment principles described in United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980), and in the face of State v. Ossey, 446 So.2d 289 (La. 1984), when:

1. At the time of the initial stop defendant had already retrieived his luggage and did not produce any identification or airline ticket.

2. Defendant was only questioned briefly at the time of the initial stop.

3. Defendant had not been told that he had to go to the office, but had been asked to accompany the officers to their upstairs office while they prepared a search warrant for the suitcase.

4. The Fourth Amendment had not been violated when defenadnt stopped the agents from typing an application for a search warrant and consented to the search of his suitcase.

PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case in the United States Supreme Court.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

LAW AND ARGUMENT 8

Permissible Investigatory Stop 8

Royer 9

Mendenhall 10

Ossey 12

CONCLUSION 15

VERIFICATION 16

APPENDIX 17

TABLE OF AUTHORITIES

Page

United States v. Mendenhall,
446 U.S. 544,
100 S.Ct. 1870,
64 L.Ed.2d 497 (1980) i

State v. Ossey,
446 So.2d 280 (La. 1984) i

State v. Jackson,
____So.2d____ (La. 1984) 1

Royer v. Florida,
____U.S.____,
103 S.Ct. 1319 (1983) 8

Schneckloth v. Bustamonte,
412 U.S.128,
93 S.Ct. 3041,
36 L.Ed.2d 854 (1973) 11

Frederick A. Ossey v. Louisiana,
No. 83-6757, October 1, 1984 12

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

STATE OF LOUISIANA,
PETITIONER

versus

CHARLES JACKSON,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

The petition of the State of Louisiana respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana Supreme Court entered in these proceedings on October 15, 1984.

OPINION BELOW

The opinion of the Louisiana Supreme Court is cited as State v. Jackson, ____So. 2d ____ (La. 1984),

No. 84-KK-1050, unreported as of the time of filing this petition, appended hereto as Appendix "A".

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on October 15, 1984. See State v. Jackson, ____So.2d____ (La. 1984), Appendix "A", page 8 hereof. This petition for Certiorari to the Supreme Court, State of Louisiana is filed herein within sixty (60) days of the judgment below. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3) and United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers and effects

against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Defendant Charles Jackson was charged by bill of information with possession with intent to distribute a controlled dangerous substance, a violation of La.R.S.

40:967A. On July 20, 1983, a Motion to Suppress the physical evidence was heard and denied. After defendant's writ to the Louisiana Fifth Circuit Court of Appeals was denied, he applied for writs to the Louisiana Supreme Court. The Supreme Court reversed the judgments of the lower courts.

STATEMENT OF FACTS

According to Agent James Hurley of the Jefferson Parish Sheriff's Office, he and Agent Whitehead were conducting a general surveillance of Delta Flight 1164 originating in Los Angeles. While observing the passengers disembark from the plane, they noticed defendant Charles Jackson acting in a nervous manner. Agents Hurley and Whitehead followed defendant and observed him slow down, stop, look around, and walk on to the end of the concourse where he disposed of something in the cigarette dispenser. Agent Whitehead testified that he looked in the dispenser afterwards and observed a cigarette

package. (Motion To Suppress, p. 26).[1] Thereafter defendant went into the restroom for a short time then continued on his way to baggage claim, continuing to look nervous and glancing over his shoulder. While waiting for his baggage defendant appeared very nervous. Eventually he retrieved a small, maroonish, mesh-type suitcase, went through the security gate and left the area.

At this time both agents stated that defendant fell under suspicion based on the following elements of the drug courier profile:

1) Mr. Jackson was coming from a "source" city, that is, a city which has proved through experience to be a source of drug traffic.

2) Mr. Jackson, while walking through the concourse to the baggage claim, stopped on

---

1 The transcript of the Motion To Suppress has been lodged as an exhibit in the Office of the Clerk of Court.

several occasions as if to look over his shoulder and appeared nervous.

3) Mr. Jackson claimed only one piece of luggage which was small to medium in size, unusual on a cross-country trip.

As defendant stood outside, Agents Hurley and Whitehead approached him with their police identification displayed and asked permission to speak to him. Upon gaining permission the agents asked defendant for identification. He claimed to have none but admitted to his name as Cnarles Jackson. In response to Agent Whitehead's request to see his ticket, defendant claimed that he had left it on the plane. The agents then informed defendant that they were conducting a narcotics investigation and requested permission to search his luggage. Defendant refused to allow the search. Jackson now fit a fourth and fifth element of the drug courier profile: 4) no identification, and 5) no airline ticket. (Motion To Suppress, p. 22). Based on these facts, the agents decided to have

defendant accompany them to the narcotics room while a warrant to search defendant's luggage was prepared and proper identification could be ascertained. Agent Whitehead picked up the luggage and defendant voluntarily followed them to the narcotics room in the airport.

Upon arriving in the office, Agent Whitehead did a protective pat-down of defendant and found a hand rolled cigarette in his sock. Since both agents identified the green vegetative substance as marijuana they immediately placed defendant under arrest, advised him of his rights and had him empty his pockets. Defendant had a clear plastic bag containing marijuana in his pocket. While defendant emptied his pockets Agent Hurley was typing the search warrant for the suitcase. Defendant, upon realizing this, agreed to sign both a consent to search and a waiver of rights form, in spite of being informed that he did not have to consent. (M.T.S., p. 23)

After defendant signed both forms, Agent Whitehead searched the suitcase where he found thirty-two clear plastic bags containing one hundred preludins each. Moreover, the airline ticket in the name of James Jackson was also found among defendant's belongings. (M.T.S., pp. 6-9).

LAW AND ARGUMENT

Permissible Investigatory Stop/Consent

The Louisiana Supreme Court determined that, although the initial stop of Jackson was permissible, when he was relocated to the police office for further questioning the detention to which he was subjected exceeded the scope of a permissible investigatory stop. Using the United States Supreme Court's opinion in Royer v. Florida, ____U.S.____, 75 L.Ed.2d 229, 103 S.Ct. 1319 (1983), the Louisiana Court said that what had begun as a consensual inquiry in a public place had escaladed into an investigatory procedure in a police interrogation room. But the facts of the case herein

differ substantially from Royer, supra, where the physical evidence was suppressed. The facts of the instant case are analogous to those in United States v. Mendenhall,, 446 U.S. 544, 64 L.Ed.2dd 497, 100 S.Ct. 1870 (1980) and State v. Ossey, 446 So.2d 280 (La. 1984), cert. denied October 15, 1984, No. 83-6757.

Royer

In Royer, supra, the defendant produced an airline ticket and driver's license which were retained by the police. Jackson produced no documents for the deputies to see much less keep. In Royer, the police retrieved Royer's luggage without permission; whereas defendant herein had possession of his luggage at the initial encounter. (In fact, the small, mesh-type bag was a supportive element of the drug courier profile.) Furthermore, Jackson was asked to accompany the agents to their office while they secured a warrant. Unlike Royer, Jackson was informed of the purpose and intent of the trip to the office. Likewise, the record

herein is void of a description of the office itself as coercive; whereas in Royer the coercive environment of the office was a factor which this Court considered in analysing the consent of Royer.

This Court listed several factors which led it to conclude that Royer's confinement was tantamount to an arrest. Two of those factors, police possession of Royer's license and airline ticket and retrieval of Royer's luggage, are not factors in Jackson's case. Undoubtedly these factors distinguish this case from Royer, where the confinement went beyond the limited restraint of a Terry investigatory stop and required reversal.

Mendennall

The facts elicited at Jackson's Motion To Suppress are more closely aligned with the facts in State v. Mendenhall, supra, where a young black woman was stopped because her behavior fit a drug courier profile. The license and airline ticket that she produced were

not in the same name but the agents returned them to Mendenhall. She then was asked to accompany the agents to the airport DEA office for further questioning. There she consented to a search of her person and handbag after being informed that she could refuse the search if she so desired. In Jackson, the agents had no license or airline ticket to keep but merely asked defendant to accompany them to the office while they checked his identification and applied for a search warrant.

The question whether defendant's consent to accompany the agents was in fact voluntary or was the product of duress or coercion, expressed or implied, is to be determined by the totality of the circumstances, Schneckloth v. Bustamonte, 412 U.S. 128, 93 S.Ct. 3041, 36 L.Ed.2d 854 (1973), and is a matter which the State has the burden of proving. Id., at 222, 93 S.Ct. at 2045.

Although Jackson testified that he felt that he was under arrest, (M.T.S., p. 33), the facts do not

support that defendant was physically restrained or detained by a show of authority as required by Mendenhall, supra. Moreover, Jackson indicated a basic knowledge of his rights by refusing to allow the agents to search his suitcase. Both agents testified that Jackson voluntarily agreed to go to the office, as Mendenhall did, while they checked his identification. The totality of these circumstances as in Mendenhall, support the conclusion that Jackson was not coerced into going to the office.

Ossey

This Court denied the writ of certiorari in Frederick A. Ossey v. Louisiana, No. 83-6757 on October 15, 1984. Ossey, supra, presented a factual situation similar to the case at bar. Ossey was approached, based on the drug courier profile, outside of the terminal at the airport by two agents. Upon request Ossey produced an airline ticket in the name of James Gibbons, a one way ticket paid for in cash. The

agents then stated that they were narcotics investigators and believed that Ossey might be transporting drugs. The agents asked Ossey if they could search his luggage. He responded that they could not search unless they had a warrant. At which point Agent Whitehead said that they would get one and asked Ossey to accompany them to the third floor office in the airport. Defendant agreed to accompany the agents and Agent Hurley carried the luggage. The Louisiana Supreme Court determined that Ossey was legitimately seized within the meaning of the Fourth Amendment when the agents informed him that he was now the focus of a narcotics investigation. But the Court concluded that Ossey's detention did not exceed the scope of a lawful Terry stop. In so doing, the Court said that there were sufficient articulable facts to justify a Terry-type stop based on a reasonable belief that defendant was transporting drugs.

In the case at bar, there are no more facts in support of duress or coercion than in Mendenhall, supra,

and Ossey, supra. See Justice Watson's dissent, Appendix "B". Petitioner herein prays that this Honorable Court concludes that the Fourth Amendment had not been violated when Jackson went with the agents to their office after being stopped for identification since Jackson voluntarily consented to accompany the agents. The voluntariness is supported by the facts: 1) Jackson had been asked to accompany the agents to the office, not required, 2) there had been neither threats nor any show of force, 3) Jackson had been questioned only briefly at the time of the initial stop, and 4) there had been no identification and airline ticket for the agents to retain. In addition, petitioner prays that this Court finds the Fourth Amendment had not been violated when Jackson consented to the search of his suitcase based on the facts that 1) the agents had been preparing a search warrant at the time of the consent and 2) Jackson had been informed that he did not have to consent to the search of the suitcase.

CONCLUSION

For the reasons set out herein this Honorable Court should and ought to issue its Writ of Certiorari to review the judgment and opinion of the Louisiana Supreme Court concerned herein.

Respectfully Submitted,

JOHN M. MAMOULIDES
DISTRICT ATTORNEY
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
STATE OF LOUISIANA

Dorothy A. Pendergast

DOROTHY A. PENDERGAST
ASSISTANT DISTRICT ATTORNEY
RESEARCH & APPEALS
OFFICE OF THE
DISTRICT ATTORNEY
NEW COURTHOUSE ANNEX
GRETNA, LOUISIANA 70053
TELEPHONE: (504) 368-1020

VERIFICATION

I, **Dorothy A. Pendergast,** a member of the Bar of the Supreme Court of the United States and the attorney of record for Respondent in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of the State of Louisiana that the foregoing is true and correct. Executed on January 4, 1985 at Gretna, Louisiana.

Dorothy A. Pendergast

DOROTHY A. PENDERGAT
ASSISTANT DISTRICT ATTORNEY

APENDIX

Appendix "A" State v, Jackson, ____So.2d____, (La. 1984)
Judgment Of Louisiana Supreme Court
Entered On October 15, 1984

Appendix "B" State v. Jackson, ____So.2d____, (La. 1984)
Justice Watson's Dissent

I certify that all of the appendices attached to the petition for Certiorari filed herein are true copies of what they purport to be.

Dorothy A. Pendergast
DOROTHY A. PENDERGAST

STATEMENT OF MAILING

I, DOROTHY A. PENDERGAST, hereby certify that, on the 4th day of January, 1984, I served copies of the foregoing Petition by personally placing same in a sealed envelope first class postage thereon fully prepaid in United States Post Office mail box in Gretna, Louisiana to each of the parties thereto, as follows:

1. To the United States Supreme Court, Office of the Clerk, Washington, D.C. 20543 enclosing established filing fee; and
2. On petitioner, **Charles Jackson**, through his counsel of record, **Ralph Capitelli**, 600 Julia Street, New Orleans, Louisiana 70130 .

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

Dorothy A. Pendergast

DOROTHY A. PENDERGAST

PARISH OF JEFFERSON

STATE OF LOUISIANA

On January 7, 1985, before me the undersigned, a Notary Public in and for said state, personally appeared Dorothy A. Pendergast, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Walter J. Rothschild
Notary Public for said County
and State

APPENDIX "A"

State v. Jackson, ____ So.2d ____, (La. 1984)

Judgment Of Louisiana Supreme Court

Entered On October 15, 1984

Consisting Of Pages 1 Thru 8

SUPREME COURT OF LOUISIANA

NO. 84-KK-1050

STATE OF LOUISIANA

versus

CHARLES JACKSON

Writ Of Certiorari
to the 24th Judicial District Court
Parish of Jefferson, State of Louisiana
Honorable Wallace Lebrun, Judge Presiding

BLANCHE, Justice

Charles Jackson was charged by bill of information with the illegal possession of preludin in violation of La. R.S. 40:967. Prior to trial, the defendant filed a motion to suppress physical evidence. The trial court denied that motion and the 5th Circuit Court of Appeal denied the defendant's application for writs. Upon the defendant's application to this court, the writ was granted and the case was remanded to the court of appeal for consideration in light of State v.

Ossey, 446 So.2d 281 (La. 1984) with the suggestion that Ossey might be distinguishable. On remand, the Louisiana 5th Circuit Court of Appeal affirmed the trial court's denial of the motion to suppress. Upon defendant's application, this court granted writs to review the correctness of the lower court's ruling.

On June 6, 1983, Charles Jackson arrived at the New Orleans International Airport on a flight from Los Angeles, California, a source city for drug transportation. Agent Whitehead and Agent Hurley[1] of the Jefferson Parish Sheriff's Office were conducting routine surveillance of that flight. These officers are plain clothes narcotics agents whose main purpose is to detect and apprehend drug couriers using a profile which is an abstract of characteristics found typical of

---

1 Agent Whitehead and Agent Hurley were the same officers who arrested Frederick Ossey in State v. Ossey, supra.

persons transporting drugs.[2] The officers observed the defendant disembark from the plane and noticed that he was walking in an unusually slow manner down the concourse, while occasionally glancing over his shoulder. These actions, together with the fact that he was arriving from a source city, were consistent with characteristics of the drug courier profile causing the officers to suspect the defendant was transporting drugs.

---

[2] Since the Drug Enforcement Administration was set up in 1974, federal drug agents have developed "drug courier profiles" that describe the characteristics generally associated with narcotics traffikers. For example, because the Drug Enforcement Administration believes that most drugs enter Detroit from one of four "source" cities (Los Angeles, San Diego, Miami, and New York), agents pay particular attention to passengers who arrive from those places. During the first 18 months of the federal program to intercept drug couriers, agents in Detroit Airport search 141 persons in 96 encounters. They found controlled substances in 77 of the encounters and arrested 122 persons. U. S. v. Mendenhall, 100 S.Ct. at 1881.

The agents placed the defendant under surveillance and followed him down the concourse to the baggage claim area where the defendant retrieved one small, maroonish, mesh-type suitcase. Testimony reveals that another established characteristic of the drug courier profile is a small amount of luggage for a long distance trip. Immediately after Jackson exited the airport, Agent Whitehead and Agent Hurley approached Jackson and showed him their police identification. After asking if they could speak to the defendant, Agent Whitehead testified that Jackson responded, "Yeah, I don't mind speaking. What you want?" The officer asked for some identification and the defendant's ticket. Jackson stated that he did not have any identification and had left his ticket on the plane, but told the officers his name was Charles Jackson. The agents then informed the defendant that they believed he was transporting drugs and asked if they could search his suitcase. Jackson flatly refused to permit the search. Agent Hurley testified at that

point, "... we advised him that we were going to obtain a search warrant for the bag and that, until we could identify him, we asked him to accompany us to our upstairs office at the airport." (sic) Tr. p. 8.

Upon arriving in the office, Agent Whitehead frisked Jackson for weapons and found a handrolled cigarette in his sock. The defendant was immediately placed under arrest and advised of his rights. More marijuana was found in his coat pocket. While Jackson was emptying his pockets, Agent Hurley began typing a search warrant for the suitcase and informed the defendant of that fact. Whitehead then asked Jackson if he would consent to the search of his suitcase. At this point, Jackson told him to "go ahead". A written consent form was prepared and Jackson signed the form. The search of the suitcase revealed 32 clear bags that contained 100 preludins each.

Jackson contends that the trial judge erred in denying his motion to suppress drugs seized during the incident at the New Orleans airport. Jackson argues

that he was being detained illegally and the evidence obtained as a result of the illegal searches is inadmissible.

The validity of an airport search on facts similar to those in the instant case has been addressed by this court in State v. Ossey, supra, and by the U.S. Supreme Court in Florida v. Royer ____ U.S. ____, 103 S.Ct. 1319, 75 L.Ed.2d 259 (1983); U.S. v. Mendenhall 446 U.S. 544, 100 S.CT. 1870, L.Ed.2d 497 (1980). In Ossey, two police officers observed Ossey at the New Orleans International Airport after he disembarked from a plane from Los Angeles. Because Ossey's appearance, luggage and actions fit the drug courier profile, the officers approached Ossey, identified themselves as policemen and asked if they could speak to him. Ossey produced a driver's license and ticket that showed that he was traveling under an alias. The officers asked to search Ossey's suitcase. Ossey responded by asking if officers had a search warrant. The officers asked Ossey to accompany them to their office while one was

prepared and Ossey agreed to go with them. The trial judge found that the defendant voluntarily accompanied the agents in a spirit of apparent cooperation and freely consented to the search of his suitcase. This finding was given great weight on appellate review. Since Ossey voluntarily accompained the officers, he was not being illegally detained when he consented to the search, the resulting seizure of the drugs was permissible.

In U.S. v. Mendenhall, supra, two DEA agents approached the defendant after determining she met several of the characteristics of the drug courier profile. Mendenhall's driver's license and ticket showed she was traveling under an alias. After returning her driver's license and ticket, the agents asked her to accompany them to the DEA office for further questioning. As in Ossey, the trial judge found that a spirit of apparent cooperation and that she freely consented to the search that revealed she was transporting drugs. The U.S. Supreme Court upheld this

finding and stated that since there was no illegal detention when Mendenhall consented to the search, the seizure of the drugs was permisslbe.

The present case differs factually from State v. Ossey and U.S. v. Mendenhall because there was no finding that the defendant voluntarily went with the agents by the trial court. In fact, in the instant case, the trial judge indicated he questioned the legality of the detention because in admitting the evidence seized in the search, he created a "good faith" exception to the exclusionary rule.[3]

---

[3] The trial court cites Illinois v. Gates, ____ U.S. ____, 103 S.Ct. 2317 (1983) as authority for his finding that the police officers involved "exercised subjective good faith in the search of Charles Jackson's luggage and as such possessed a reasonable belief in the veracity of their probable cause determination." Gates involved the issue of probable casue in the issuance of a search warrant, not a stop and seizure at an airport. The court determined in Gates that a magistrate, in determining probable cause in the issuance of a search warrant, should look to the "totality of the circumstances" rather than just relying on the two-pronged test defined in the Aguilar and Spinelli decisions. The case never considered a good faith exception to the exclusionary rule

In Royer, unlike Ossey or Mendenhall, the Court held that the drug discovered in an airport search should be suppressed. Royer's appearance, luggage and actions fit the drug courier profile and aroused the suspicions of two plain clothes detectives. Royer bought a one-way ticket to New York and checked two bags. The detectives approached him and identified themselves and asked if Royer would speak to them. Upon request, Royer produced a driver's license and ticket that showed he was traveling under an alias. The detectives informed him that they were conducting a narcotics investigation and they suspected him of transporting drugs. The detectives asked Royer to accompnay him to their office. The officers, without Royer's consent, retrieved Royer's luggage. When asked if he would consent to the search of his luggage, Royer produced a key that unlocked one of the suitcases. Marijuana was found in both bags.

The Court determined that the initial encounter with the detectives was a permissible consensual

encounter. Royer was "seized" when he was told he was the focus of a drug investigation and was asked to accompany them to another room. The court found that there were reasonable grounds to justify a temporary Terry-type detention; however, the court went on to find that the limits of a permissible temporary detention had been exceeded. The consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room and as a practical matter, Royer was under arrest. The officers' actions of compelling Royer to follow them and then subjecting him to interrogation in a small private room exceeded the scope of a permissible investigatory detention. Since Royer was illegally detained when he consented to the the search of his luggage, the consent was tainted by the illegality and was ineffective to justify the search. Florida v. Royer, supra, is analogous to the present case. As in Royer, the issue in the instant case is whether Jackson was being illegally detained at the time the evidence he

seeks to suppress was discovered. The initial encounter between the officers and Jackson outside the airport was not a "seizure" for purposes of the 4th Amendment. Jackson agreed to cooperate with the officers instead of walking away from them.[4] However, when the officers asked to see Jackson's identification and ticket, he could not or did not produce either. The officers then asked if they could search his suitcase and Jackson flatly refused to permit the search. Jackson then was told he was the focus of a drug investigation. He was to accompany the officers upstairs so he could be identified and so a search

---

[4] If the agents reasonably believed the bag contained narcotics, they could have briefly detained the luggage to investigate the circumstances that aroused the suspicion by means that are properly limited in scope, such as exposure to a narcotics detection dog. U.S. v. Place, ____ U.S. ____, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983); State v. Ossey, supra, 446 So.2d at 286.

warrant could be obtained for the suitcase.[5] As in Royer, when Jackson was relocated to the police office for further questioning, the detention to which he was subjected exceeded the scope of a permissible investigatory stop. Like Royer, "(w)hat had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room." Florida v. Royer, 103 S.Ct. 1327, 75 L.Ed.2d at 240 (1983). Jackson's detention in an upstairs office for further investigation and interrogation was no longer the brief intrusion on Jackson's liberty permitted by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968), and its progeny. The incident had become a custodial interrogation and as a practical matter, Jackson, like the defendant in Royer, was under arrest.

---

5 Officers Hurley and Whitehead testified that they "took him", Tr. p. 15, "escorted him", Tr. p. 15 and 23, and "asked him to accompany us", Tr. p. 8 and 22, to their officer on the third floor.

Jackson did not voluntarily consent to the relocation and was not free to go. Jackson testified that he went along with the officers without a word because he believed that he was under arrest. Tr. p. 33. If Jackson had tried to leave, the police would have stopped him. Officer Hurley testified that he and Officer Whitehead were going to "detain him there long enough for us to identify him and secure a warrant." Thus, when Jackson was taken into custody, the only articuable basis for his arrest was that he was a nervous young black man from Los Angeles with one suitcase who did not present any identificcation upon a police officer's request. These facts do not constitute probable cause for arrest. Florida v. Royer, 103 S.Ct. at 1324, U.S. v. Mendenhall, 446 U.S. at 556, 100 S.Ct. at 1878. Dunaway v. New York, 442 U.S. 200 at 210 n. 12, 99 S.Ct. 2248 at 2255 n. 12, 60 L.Ed.2d 824 at 934 (1979); State v. Key, 375 So.2d 1354 (La. 1979); State v. Matthews, 366 So.2d 1345 (La. 1978); State v. Washington, 364 So.2d 958 (La. 1978). We regard the

officers actions in taking Jackson into custody without his consent for the purpose of further interrogation as going beyond the limits of a permissible investigatory stop and constituting an arrest without probable cause. Accordingly, any evidence discovered as a result of this illegal detention, whether with or without Jackson's consent, was tainted and should have been suppressed. Florida v. Royer, supra; Dunaway v. New York, supra.

DECREE

For the above reasons, the judgments of the lower courts are reversed.

REVERSED

APPENDIX "B"

Justice Watson's Dissent

State v. Jackson, ____So.2d____ (La. 1984)

SUPREME COURT OF LOUISIANA

No. 84-KK-1050

STATE OF LOUISIANA

VERSUS

CHARLES JACKSON

WATSON, Justice, dissenting.

Defendant Jackson arrived from Los Angeles, California a recognized source city for drugs, and exited the plane in an unusually slow manner. He continued to appear nervous and apprehensive and repeatedly looked over his shoulder while claiming his one small suitcase. Jackson said he had no identification or airline ticket and told the investigating officers something extemely suspicious: "he didn't know what was in the bag" (Tr. 8). Jackson was asked to accompany the officers to an upstairs office at the airport. According to the officers, Jackson was not under arrest at that time, although he

felt that he had no choice in the matter. The facts are closer to those in State v. Ossey, 446 So.2d 280 (La., 1984); State v. Watson, 416 So.2d 1919 (La., 1982); State v. Salazar, 389 So.2d 1295 (La., 1980); and U.S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) than they are to those in Florida v. Royer, ____ U.S. ____, 103 S.Ct. 1319, ____ L.Ed.2d ____ (1984).

The detectives in Royer had possession of defendant's airline ticket and had retrieved and retained possession of his luggage, thereby making his flight impossible. Jackson had retrieved his own suitcase after completion of his flight when he was escorted upstairs to the agents' office. Jackson's lack of identification, lack of an airline ticket and ignorance of the contents of his suitcase justified the limited restraint involved in his being escorted to the upstairs office. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

I respectfully dissent.